

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

UNITED STATES OF AMERICA)	
)	
v.)	CRIM. NO. 21-00142-JB
)	
KARTARIUS DEWAN JOHNSON, aka)	
TAREEQ AKHIL ANAD)	

**UNITED STATES' MOTION TO COMPEL COMPLIANCE
WITH PROTECTIVE ORDER**

COMES NOW the United States of America, by and through Sean P. Costello, the United States Attorney for the Southern District of Alabama, and respectfully moves the Court to compel standby counsel for pro se defendant Kartarius Dewan Johnson, aka Tareeq Akhil Anad ("Johnson") to comply with the Court's protective order dated December 6, 2021 (the "Protective Order"). Doc. 35.

A. Background

On August 26, 2021, a federal grand jury in this district charged Johnson in a fraud case with voluminous discovery. Doc. 1 (indictment). At arraignment, Johnson notified the Court that he wished to represent himself. Doc. 11. The Court appointed counsel for Johnson, who insisted that he did not want a lawyer, and later ordered that the attorney was standby counsel only. Docs. 10, 21. The Court's order appointing standby counsel remains in effect. Doc. 21. Johnson is detained pending trial. Doc. 14. On November 15, 2021, the Court held a *Faretta* hearing and determined that Johnson could proceed pro se. On December 6, 2021, the Court entered the Protective Order that stated in part:

3. To limit the dissemination of the above-described protected discovery, the parties are **ORDERED** to adhere to the following:

A. Only standby counsel, standby counsel's staff, defendant's experts, and defendant shall have access to the protected discovery. Prior to allowing these persons access to the protected discovery, standby counsel and/or defendant will advise each person of the limitations on use and disclosure of discovery as dictated by this motion and subsequent Protective Order and will provide each such person with a copy of the Protective Order issued in this case. **No other persons, other than those described above, shall have access to the protected discovery.**

B. The protected discovery will be used solely for purposes of preparing defendant's defense in this case.

C. Any protected discovery in this case will be stored at standby counsel's office or the office of a defense expert who, as noted, shall be subject to the same disclosure limitations. The defendant will be permitted to review the protected discovery at an appropriate facility at the U.S. Federal Courthouse, 155 St. Joseph Street, Mobile, Alabama, by coordinating with standby counsel and/or the U.S. Marshals Service.

D. Any notes, memoranda, summaries, or other documents reflecting the protected discovery or copies made of the protected discovery will also be stored at standby counsel's office or at defense expert's office and will be considered protected discovery. The defendant will be permitted to review such notes, memoranda, summaries, or other documents reflecting the protected discovery or copies made of the protected discovery at an appropriate facility at the U.S. Federal Courthouse, 155 St. Joseph Street, Mobile, Alabama, by coordinating with standby counsel and/or the U.S. Marshals Service.

Doc. 35, PageID.175–76 (emphasis in original).

On December 29, 2021, the United States informed standby counsel that discovery was available for pickup at the U.S. Attorney's Office. Doc. 40, PageID.187. On January 3, 2022, standby counsel notified the United States that it should provide the discovery directly to Johnson and separately notified the Court that "he [standby counsel] is not a party to the [protective order] matter" because Johnson was representing himself. *Id.*, PageID.186. Standby counsel's notice continued in part:

The proposed order, which was adopted by the court, appears to contravene this right. The protective order not only prohibits Mr. Johnson from having a copy of the discovery, it also prohibits him from personally maintaining any copies of notes that he makes from the discovery.

The government's proposed protective order enlists the assistance of undersigned counsel in making arrangements for Mr. Johnson to review the discovery at the U.S. Marshal Service. Undersigned counsel has sought the advice of the Alabama Bar and understands that he cannot undertake any action on behalf of Mr. Johnson as undersigned counsel is not representing him. Undersigned counsel understands that his role is to advise Mr. Johnson should Mr. Johnson request such advice. If Mr. Johnson requests the assistance of counsel, undersigned counsel could be appointed to represent him in this matter.

On December 29, the government notified undersigned counsel that 9,844 pages of redacted discovery are now available at their office for Mr. Johnson's review. Undersigned counsel has concluded that he cannot act on Mr. Johnson's behalf without interfering with his right to represent himself and, consequently, cannot make arrangements for him to review the discovery. The government will have to meet its responsibilities under the Federal Rules of Criminal Procedure without the assistance of undersigned counsel.

Id., PageID.186–87.

To date, standby counsel has not picked up the discovery. Prior to filing the instant motion, the United States conferred with standby counsel about the Protective Order.

B. Discussion

As the U.S. Supreme Court has recognized, courts appoint standby counsel to assist pro se defendants:

Faretta rights are also not infringed when standby counsel assists the pro se defendant in overcoming routine procedural or evidentiary obstacles to the completion of some specific task, such as introducing evidence or objecting to testimony, that the defendant has clearly shown he wishes to complete

Accordingly, we make explicit today what is already implicit in *Faretta*: A defendant's Sixth Amendment rights are not violated when a trial judge appoints standby counsel—even over the defendant's objection—to relieve the judge of the need to explain and enforce basic rules of courtroom protocol or to assist the

defendant in overcoming routine obstacles that stand in the way of the defendant's achievement of his own clearly indicated goals.

McKaskle v. Wiggins, 465 U.S. 168, 183–84 (1984); *see also Barnes v. Sec'y, Dep't of Corr.*, 888 F.3d 1148 (11th Cir. 2018) (appointment of standby counsel to present mitigating evidence in death penalty trial did not violate defendant's right to represent himself); *United States v. Welty*, 674 F.2d 185, 193 n.5 (3d Cir. 1982) (“[W]e stress that appointment of standby counsel is the prudent course to take when a defendant elects to proceed pro se.”).

District courts across the country routinely task standby counsel with helping pro se defendants review discovery. *See, e.g., United States v. Eklund*, 2020 WL 6947373, at *2 (D. Alaska Nov. 25, 2020) (“The government shall promptly ensure that standby counsel has his own set of discovery CDs so that he may print the requested portions of this discovery for Mr. Holger.”); *United States v. Green*, 2020 WL 5877893, at *4 (E.D. Va. Oct. 2, 2020) (“The Court appointed Mr. Hallauer as standby counsel to help facilitate Defendant's review of discovery materials.”); *United States v. Jackson*, 2017 WL 6262187, at *1 (M.D. Ga. Mar. 17, 2017) (“[T]he Magistrate Judge . . . ordered standby counsel be appointed due to the case's voluminous discovery materials and the likely complexity of the trial”); *United States v. Youker*, No. 2:14-CR-0152-SMJ-1, 2015 WL 13864169, at *3 (E.D. Wash. Apr. 30, 2015) (“Standby counsel shall make himself reasonably available to ensure that Defendant has an opportunity to review and obtain discovery.”); *United States v. Darwich*, 2011 WL 2015570, at *1 (E.D. Mich. May 24, 2011) (“[I]t is standby counsel's responsibility to facilitate the transmission of discovery materials to Defendant. The court has imposed this obligation on standby counsel as an officer of the court in order to ensure the delivery of what may be large amounts of paperwork to an imprisoned pro se Defendant Delivery to standby counsel is the most practical way to ensure the materials

are not lost, prohibited, or otherwise unavailable to Defendant.”); *United States v. Kosoko*, 2010 WL 3025595, at *2 (D. Nev. July 29, 2010) (“Standby counsel’s role is to assist Mr. Kosoko in his defense as necessary. To this end, standby counsel shall make available to Mr. Kosoko any and all discovery and defense materials when requested by Mr. Kosoko.”); *United States v. Cannistraro*, 799 F. Supp. 410, 419 (D.N.J. 1992) (“Because of the complexity of this case and the pre-trial motions and discovery in progress, standby counsel is crucial at this point in the litigation and will continue to be crucial throughout the trial.”); *United States v. Seybold*, 979 F.2d 582, 584 (7th Cir. 1992) (“[T]he court also ordered the prosecutor to turn over certain discovery materials, including the tapes, to standby counsel, who was to relay the information to Mr. Seybold. Mr. Seybold objected to this arrangement and asked that the materials be delivered directly to him, but the court insisted the discovery materials be delivered to standby counsel.”).

The Court’s appointment of standby counsel in Johnson’s case is valid and ongoing. Doc. 21; *see also Martinez v. Ct. of App. of Calif., Fourth App. Dist.*, 528 U.S. 152, 162 (2000) (“A trial judge may also terminate self-representation or appoint ‘standby counsel’—even over the defendant’s objection—if necessary.”); *Barnes v. Sec’y, Dep’t of Corr.*, 888 F.3d 1148, 1157 (11th Cir. 2018) (“[T]he *Faretta* Court indicated that a trial court could appoint standby counsel to aid in the defense, even over the objection of a pro se criminal defendant.”). Hence, notwithstanding his entreaties to the contrary, standby counsel has pending legal obligations to Johnson until the Court orders otherwise.

The Protective Order is reasonable, enforceable, binding on standby counsel and the litigants, and contemplated by the Court’s local rules. *See* S.D. Ala. CrLR 16(d) (“No discovery motions

shall be filed for information or material within the scope of this Rule unless it is a motion to compel, a motion for protective order, or a motion for an order modifying discovery.”). The Protective Order articulates standby counsel’s role as a conduit for discovery for Johnson, a fact that standby counsel acknowledges in his notice to the Court. Doc. 40, PageID.187. While standby counsel repeatedly cites the United States’ “proposed protective order” in his notice, *id.*, the Protective Order was signed by the Court and he is bound by its provisions.

Standby counsel cites no case law for his proposition that he need not comply with the Protective Order. By failing to comply and receive discovery for Johnson, standby counsel is hindering Johnson’s pro se representation. If standby counsel is uncertain about his role in Johnson’s case or has any concerns about his continued appointment, the appropriate step is to file a motion with the Court and provide the United States an opportunity to respond. *See United States v. Hyde*, 2020 WL 1488355, at *2 (S.D. Ga. Mar. 23, 2020) (“Should standby counsel or the pro se Defendant seek any clarity regarding standby counsel’s role in this case, they should seek that clarity through a written motion well in advance of trial.”).

Enforcement of the Protective Order is required to ensure that Johnson can review the discovery and adequately represent himself at trial. The mechanics of delivery and review of discovery outlined in the Protective Order are meant to ensure that sensitive discovery material is not disseminated to third parties. *See United States v. Johnson*, 980 F.3d 1364, 1374–75 (11th Cir. 2020) (defendant’s violation of a discovery protective order barring disclosure of discovery or copying discovery material supports an obstruction-of-justice enhancement).

C. Conclusion

For the above reasons, the United States respectfully moves the Court to order standby counsel to comply with his obligations as set forth in the Protective Order.

Respectfully submitted,

SEAN P. COSTELLO
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By:

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CERTIFICATE OF SERVICE

I hereby certify that on January 12, 2022, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to standby counsel for the defendant and sent the foregoing by certified mail to the defendant at the Escambia County Detention Center in Brewton, Alabama.

/s/ SINAN KALAYOGLU

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Assistant United States Attorney

/s/ JUSTIN D. ROLLER

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